

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ACHATES REFERENCE PUBLISHING,
INC.,

Plaintiff,

vs.

SYMANTEC CORPORATION;
GLOBALSCAPE INC.; COMMON TIME
INC.; COMMON TIME LTD.; NATIVE
INSTRUMENTS SOFTWARE SYNTHESIS
GMBH; NATIVE INSTRUMENTS NORTH
AMERICA, INC.; STARDOCK SYSTEMS
INC.; VALVE LLC; ELECTRONIC ARTS,
INC.; NERO AG; NERO INC.;
QUICKOFFICE, INC.; and SOLARWINDS
INC.

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Achates Reference Publishing, Inc. ("Achates"), by and through its attorneys, as and for its complaint against defendants Symantec Corporation, GlobalSCAPE Inc., Common Time Inc., Common Time Ltd., Native Instruments Software Synthesis GmbH, Native Instruments North America, Inc., Stardock Systems Inc., Valve LLC, Electronic Arts, Inc., Nero AG, Nero Inc., QuickOffice, Inc., and SolarWinds Inc., alleges:

PARTIES

1. Plaintiff Achates is a Texas corporation, having an address at 5890 Fairview Parkway, McKinney, TX 75069.

2. Defendant Symantec Corporation (“Symantec”) is a Delaware corporation, having an address at 350 Ellis Street, Mountain View, CA 94043.

3. On information and belief, Symantec is qualified to do business in the State of Texas, Filing No. 800023378, and has appointed Corporation Service Company, with an address of 211 E. 7th Street, Suite 620, Austin, Texas, 78701, as its agent for service of process.

4. Defendant GlobalSCAPE Inc. (“GlobalSCAPE”) is a Delaware corporation, having an address at 4500 Lockhill Selma Road, Suite 150, San Antonio, TX 78249.

5. On information and belief, GlobalSCAPE is qualified to do business in the State of Texas, Filing No. 0011052206, and has appointed James R. Morris, with an address of 4500 Lockhill Selma Rd Ste 150, San Antonio, TX 78249-2073, as its agent for service of process.

6. Defendant Common Time Inc. (“CommonTime Inc.”) is a Nevada corporation, having an address at 418 S 9th St, Ste 208, Boise, ID, 83702.

7. Defendant CommonTime Ltd (“CommonTime Ltd”) is a limited company registered in England and Wales under company number 03133149 and has its registered office at 15 St Christopher's Way, Pride Park, Derby DE24 8JY.

8. On information and belief, Defendants CommonTime Inc. and CommonTime Ltd (collectively “CommonTime”) operate an interactive website at www.commontime.com that provides downloads of its products specifically directed to Texas residents.

9. Defendant Native Instruments Software Synthesis GmbH, (“Native Instruments GmbH”) is a German corporation, having an address at Schlesische Straße 28-30, Berlin, null D-10997 Germany.

10. Defendant Native Instruments North America, Inc. (“Native Instruments, Inc.”) is a California corporation with an address at 5631 A Hollywood Boulevard, Los Angeles, CA 90028.

11. On information and belief, Defendants Native Instruments GmbH and Native Instruments, Inc. (collectively “Native Instruments”) operate an interactive website at www.native-instruments.com that provides downloads of its products to Texas residents.

12. On information and belief, Defendants Native Instruments direct their products into Texas via resellers identified on the www.native-instruments.com web site including: Guitar Center, Genesis Technologies, BestBuy, Musicians, Switched On Austin, and Murphy’s Music.

13. Defendant Stardock Systems Inc., (“Stardock”) is a Michigan corporation, having an address at 15090 N Beck Rd Ste 300, Plymouth, MI 48170.

14. On information and belief, Defendant Stardock operates an interactive website at www.stardock.com that provides downloads of its products to Texas residents.

15. On information and belief, Defendant Stardock specifically targets Texas residents by, *inter alia*, selling University of Texas and Texas A&M branded products through its www.stardock.com website.

16. Defendant Valve LLC., (“Valve”) is a Washington corporation, having an address at 10500 NE 8th St., Ste 1000, Bellevue, WA 98004.

17. On information and belief, Defendant Valve operates interactive websites at www.valvesoftware.com and <http://store.steampowered.com/> that provide downloads of its products to Texas residents.

18. Defendant Electronic Arts, Inc., (“EA”) is a Delaware corporation, having an address at 209 Redwood Shores Pkwy, Redwood City, Ca 94065.

19. On information and belief, EA is qualified to do business in the State of Texas, Filing No. 0009944106, and has appointed National Corporate Research, Ltd., with an address of 800 Brazos St Ste 400, Austin, TX 78701-2548, as its agent for service of process.

20. Defendant Nero AG., (“Nero AG”) is a German corporation, having an address at Im Stoeckmaedle 13-15, 76307 Karlsbad, Germany.

21. Defendant Nero Inc. (“Nero Inc”) is a Delaware corporation, having an address at 330 N. Brand Blvd. Suite 800, Glendale, CA 91203.

22. On information and belief, Defendants Nero AG and Nero, Inc. (collectively “Nero”) operate an interactive website at www.nero.com that provides downloads of its products to Texas residents.

23. On information and belief, Defendants Nero direct their products into Texas via resellers.

24. Defendant QuickOffice, Inc., (“QuickOffice”) is a Delaware corporation, having an address at 4965 Preston Park Blvd, Ste 500, Plano, TX 75093.

25. On information and belief, QuickOffice is qualified to do business in the State of Texas, Filing No. 800532143, and has appointed Registered Agent Solutions, Inc., with an address of 515 Congress Ave, Austin, Texas, 78701, as its agent for service of process.

26. Defendant SolarWinds, Inc. (“SolarWinds”) is a Delaware corporation, having an address at 3711 South MoPac Expressway, Building Two, Austin, TX 78746.

27. On information and belief, SolarWinds is qualified to do business in the State of Texas, Filing No. 0800938300, and has appointed C T Corporation System, with an address of 350 N Saint Paul St Ste 2900, Dallas, TX 75201-4234, as its agent for service of process.

JURISDICTION AND VENUE

28. This is an action for patent infringement arising under patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

29. This Court has personal jurisdiction over the defendants because they all, either directly or through intermediates such as distributors, retailers, and others, regularly and systematically conduct and transact business within the State of Texas. Defendants' business conduct and transactions include, but are not limited to, shipping, distributing, selling, and offering for sale material or products to companies, individuals, and other entities located in the State of Texas.

30. Jason Paul DeMont is a resident of this district.

31. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b), (c).

PATENT INFRINGEMENT

32. On November 9, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,982,889 ("the '889 patent") entitled "Method and Apparatus for Distributing Information Products," with Jason Paul DeMont as sole inventor. A true and correct copy of the '889 patent is attached as Exhibit A.

33. On January 9, 2001, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,173,403 ("the '403 patent") entitled "Method and Apparatus for Distributing Information Products," with Jason Paul DeMont as sole inventor. The '403 patent is

a continuation-in-part of the '889 patent. A true and correct copy of the '403 patent is attached as Exhibit B.

34. Achates is the owner by assignment of all right, title, and interest in and to the '889 patent and the '403 patent, with full and exclusive right to bring suit to enforce these patents.

35. In violation of 35 U.S.C. § 271, defendants have infringed the '889 patent and the '403 patent by making, using, selling, and offering for sale software that uses the product activation technology described and claimed in the '889 and '403 patents, without authority of Achates.

36. In violation of 35 U.S.C. § 271, defendants have induced and contributed to infringement of the '889 patent and the '403 patent.

37. Without limitation, Defendant Symantec directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the following products: the Norton family of products that require activation and the Symantec Security, Information Risk and Compliance, Storage, Infrastructure Operations, and Business Continuity products that require activation. Such products infringe the '889 patent and the '403 patent by without limitation employing Symantec's activation systems including its Licensing Portal and/or FileConnect.

38. Symantec sells the products referenced above to eligible Texas entities through the Department of Information Resources of the State of Texas, as shown on:

http://eval.symantec.com/mktginfo/enterprise/other_resources/symc_tx_dir_contract_no_dir-sdd-600_pricelist_62508.pdf. Likewise, Symantec uses resellers such as InfoSec, LLC to bring in private enterprise customers in Texas, as shown on:

http://www.symantec.com/content/en/us/partners/partner_successes/b-advanced_infosec_llc_PS_21180008.en-us.pdf. In all, Symantec has 118 such “partners” in Texas, as shown on:

http://partnerlocator.symantec.com/public/search;p=1;state=TX%7CTexas;bnors=business%20need;v=advanced_results;country=United%20States;proximity=25/. One Symantec partner is the Plano, Texas-based EDS (an HP company), as shown on these webpages:

<http://www.symantec.com/partners/programs/globalstrategic/gsp.jsp?id=hp> and

<http://www.symantec.com/content/en/us/partners/media/sym-eds-brochure-en.pdf>. Another partner is Dell Computer of Round Rock, Texas, as shown on these webpages and videos:

<http://www.symantec.com/partners/programs/globalstrategic/gsp.jsp?id=dell>,

<http://dell.symantec.com/system/files/resources/videos/SEP.wmv>, and

<http://www.horizonvp.com/IDS/>. Part of this relationship with Dell is through Symantec’s Altiris –branded products, as shown on:

http://www.symantec.com/business/theme.jsp?themeid=dell_client_manager. Altiris and Symantec are one company, as shown on:

<http://www.symantec.com/business/theme.jsp?themeid=altiris>. Altiris uses the Symantec Licensing Portal, as shown on: <https://licensing.symantec.com/acctmgmt/landingPage.jsp>.

39. Without limitation, Defendant GlobalSCAPE directly and indirectly infringes at least claim one of the ‘403 patent and claim one of the ‘889 patent by making, selling, distributing, and causing its customers to use, at least the CuteFTP family of products. Such products infringe the ‘889 patent and the ‘403 patent by without limitation employing activation technology.

40. Without limitation, Defendants Common Time directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the MSuite family of products. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

41. Without limitation, Defendants Native Instruments directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the Komplete family of products. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

42. Without limitation, Defendant Stardock directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the WindowBlinds products. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

43. Without limitation, Defendant Valve directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the Left4dead and HalfLife family of games. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

44. Without limitation, Defendant EA directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the Sims family of games. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

45. Without limitation, Defendants Nero directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the Nero Multimedia Suite family of products. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

46. Without limitation, Defendant Quick Office directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the Quick Office family of products. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

47. Without limitation, Defendant Solar Winds directly and indirectly infringes at least claim one of the '403 patent and claim one of the '889 patent by making, selling, distributing, and causing its customers to use, at least the Engineer Suite family of products. Such products infringe the '889 patent and the '403 patent by without limitation employing activation technology.

48. Achates distributed software marked with the '889 patent and the '403 patent numbers. Additionally, Achates has previously brought an action in this Court to enforce the '889 and '403 patents. Upon information and belief, defendants were aware of the '889 patent and the '403 patent and their infringement has been, and continues to be, willful.

49. Achates has been harmed by defendants' infringement. Such harm will continue unless the defendants are enjoined by this Court from further infringement.

DEMAND FOR RELIEF

WHEREFORE, plaintiff Achates requests entry of a judgment against the defendants, granting relief as follows:

- A. Determining each defendant to be liable to Achates for patent infringement of the '889 patent and the '403 patent;
- B. Awarding Achates damages adequate to compensate for the infringement;
- C. Determining each defendant was willful in the infringement of the '889 patent and the '403 patent;
- D. Increasing the damages up to three times, under authority of 35 U.S.C. §284, second paragraph;
- E. Permanently enjoining each defendant, its officers, agents, servants, employees, and attorneys, and those persons acting in concert or participation with each defendant, from further infringement of the '889 patent and the '403 patent;
- F. Determining that this is an exceptional case and awarding Achates its reasonable attorney fees.
- G. Granting such other and further relief as the Court may find just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, plaintiff Achates hereby demands a trial by jury for all issues in this case.

Respectfully submitted,

Dated: June 20 2011

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